DOCUMENT RESUME

ED 055 558 HE 002 604

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TITLE The Professors and Collective Action: Which Kind?
INSTITUTION Reed Coll., Portland, Oreg.
PUB DATE 18 May 71
NOTE 25p.; Paper presented at the 25th anniversary of the University of Minnesota Industrial Relations Center, May 18, 1971

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Collective Bargaining; Collective Negotiation; *College Faculty; *Faculty; *Governance; *Higher Education; Participation; Salaries

ABSTRACT

In discussing collective action in college and university government one must avoid making a sharply dichotomous choice: faculty senate versus collective bargaining. Rather, one must think in terms of a variety of governmental forms each of which may feature collectivity and/or bargaining. Faculty members employ collective bargaining methods for a variety of reasons: (1) recognition of the rights of faculty to share authority; and (2) financial exigency, i.e., some protection in case of dismissal or nonrenewal of contract, the possibility of a strike strategy, and as a way to increase salaries. There are at least 2 types of academic collective agreement: (1) the conventional collective agreement, in which the agreement conference itself is regarded as the only decisionmaking body through which the faculty participates in governance; and (2) the procedural agreement, in which the agreement conference is not regarded as the only decisionmaking body through which the faculty shares authority in institutional governance. The substantive content of such an agreement tends to be quite narrow and restricted to salary or related items. This second type is preferable because it uses the collective bargaining form of government as a vehicle for confirming another kind of government: the committees, procedures, etc., included in a properly constituted academic-senate model. The need for these other academic government forms is discussed in this paper. (AF)

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THE PROFESSORS AND COLLECTIVE ACTION: WHICH KIND? */

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Introduction:

Although this talk will be concerned with collective bargaining by college and university faculty members, I have omitted the term "collective bargaining" from the title of the talk.

The intention is thereby to build a modest hedge against an insidious tyranny of the words "collective bargaining." Let me explain. The term "collective bargaining" has for most of us a very particular institutional reference (which I need not rehearse). When we begin to think about the government of institutions (including colleges and universities) by collective action, we tend almost automatically to assimilate the entire domain of collective action to "collective bargaining." And we thereby direct our thinking in terms of the very particular institutional mold conveyed by these words.

With our thinking thus directed by virtue of our terminology, we lose sight of the circumstance that government by collective action may take any of a variety of forms--some of which may only somewhat resemble the conventional

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*/This paper was prepared for presentation to a seminar (May 18, 1971) as part of a program marking the twenty-fifth anniversary of the University of Minnesota Industrial Relations Center. It was intended to afford background for and a focal point for subsequent discussion and, as such, represents neither a self-contained nor a comprehensive treatment of the subject.

**/Also, member of the national Council of the American Association of University Professors and member of AAUP national Committee "N" on collective bargaining. The views expressed in this paper are those of the author and are in no way intended to represent the position of AAUP (unless so identified).

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collective bargaining model. In those cases where faculty members do participate in the government of their institutions, they do so by some form of collective action. Indeed, in many instances, conventional college or university government--generally termed the "faculty senate" or "academic senate" model--features one of the most powerful collectivities yet devised by the hand of organization man--that is, the faculty as a corporate body.

When we analyze college and university government, we should avoid falling into a trap of supposing the the problem is involved with a sharply dichotomous choice, i.e., "faculty senate" on the one hand, or "collective bargaining" on the other. Rather, we should be prepared to think in terms of a variety of government forms (each of which may feature "collectivity" and each of which may feature "bargaining"). We should in the analysis identify those basic properties of these government forms in terms of which each may be distinguished --for example, the mix of tactics employed in the negotiation (e.g., pursuasion and rationalization or coercion), dispute management techniques employed (e.g., peer-group judgment or arbitration), the character of the political relationship between those who are represented and those who represent, and the like. It is in such terms that forms of institution government (by whatever names they may be designated) are usefully to be distinguished.

It will be well to remark that the higher-education sector is comprised of a hetrogeneous collection of institutions--ranging from two year associate-degree programs to universities of varying sizes and comprehensiveness of programs. Clearly, what may work well in one particular institutional context may not work at all in another. In addressing myself rather generally speaking

to collective bargaining in institutions of higher education, I may neglect distinctions which might be of importance when considering any given particular institutional context.

There is another general kind of problem which we should recognize at the outset. In an uncommonly good welcoming address to the recent annual meeting of AAUP in Philadelphia, Dr. Martin Meyerson, President of the University of Pennsylvania, pointed out that the study of college and university government is in a rather rudimentary stage of development. There is a lack of hard empirical data descriptive of how such governments really do function. Moreover, there is an absence of well-developed conceptual categories to inform the collection and analysis of such data. Consequently, discussion and analysis of this subject is apt to lean more heavily than might be desired upon casual empiricism and natural-history-type accounts. (I, of course, would like to feel that my own approach to the subject matter rests upon something more substantial than the bed of sand that would be implied by the foregoing characterization of the state of this art.)

In thinking about the best approach to this topic I have decided to begin by dealing with various issues rather pragmatically, and to some extent, in terms of the history of recent events. Then subsequently I will suggest ways in which various government forms can, in a genre sense, be distinguished in terms of basic principles.

Why Get Into Collective Bargaining?

As recent events at SUNY bear witness, faculty members are getting into

collective bargaining in relatively large numbers. */ Why? According to a recent comment by Professor Joseph DeMent, who is involved with collective bargaining at Oakland University in Michigan, there are two basic reasons for faculty members to get into collective bargaining: (1) if you need to; (2) if you can't help it. Whether the second reason is to be regarded as rather enigmatic, I can leave up to you (or perhaps for our subsequent discussion). Turning to the first, on what grounds might faculty members feel that they need to get into collective bargaining? Such discussions as I have had with faculty members engaged in collective bargaining or actively in pursuit of such engagement, have turned up two basic answers to this question.

The first of these essentially is involved with the matter of "recognition" --recognition, that is, of the rights of the faculty effectively to "share authority," to share in the making of those decisions which they regard as properly belonging to the domain of their own professional responsibilities, interests and competance.

Of course, many faculties organized along conventional academic-senate lines already enjoy recognition in this sense. For them, there is no reason, on this score at least, to get into collective bargaining. My own view is that in most cases where conventional academic-senate-type government is working well, where "shared authority" is a reality--there probably is little to be gained by getting into collective bargaining. I would doubt that many

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*/ The Chronicle of Higher Education (May 10, 1971) lists eighty-one colleges and universities in which faculties are engaged in collective bargaining.

faculties so situated would opt for collective bargaining. They already have a powerful form of collective action going for them.

For other faculties this is not the case, for any of various reasons. Perhaps an adequate government format never was achieved. Or perhaps a faculty government which once was satisfactory has in various ways been attenuated such that the concept of "shared authority" is no longer a reality.*/ For this "recognition" problem, going the collective-bargaining route may not only prove helpful, it may prove the only feasible way to begin to govern an otherwise ungovernable institution. For, once the question of representation is settled, the college or university administration will be required by law to recognize and bargain in good faith with the duly certified representative of those faculty members who comprise the unit. You observe that no "show of force" is involved at this stage of the procedures, no substitution of an "adversary relationship" for "shared authority"--but rather, a de jure effort to embark upon the enterprise of de facto sharing of authority. Some faculty members involved in collective bargaining have pointed out to me that one of the particular advantages of recognition in this form is that the administration will be required to divulge various kinds of information relating to the finances of the institution which could not otherwise be obtained, but which are in any case (that is, collective bargaining or no) crucial to the adequate

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*/Joseph W. Garbarino (see "Precarious Professors: New Patterns of Representation," Industrial Relations, Feb. 1971) points out that recently, conflicts between organized faculty senates and administrative and governing boards have become more frequent and serious and he lists a number of such "challenges to the senate system." This is an interesting article which I recommend to you.

participation of the faculty in decision-making.

The second basic reason attracting faculty members to collective bargaining seems to be economic. There can be little question among us (and consequently, no need for me to document) the circumstance that the academy has fallen upon relatively hard times. Many of us, of course, have had and are having first-hand evidence in our own institutions, in terms of personnel and program cutbacks, lagging salaries and the like. At least since the publication of the 1940 Statement, we have been at least vaguely aware that "bona fide financial exigency" is one possible reason for termination of a tenured professor. But until very recently, the question never seemed to be raised, just what is a case of "bona fide financial exigency?" Now of course, this is becoming a very lively issue. In its report to the recent annual meeting, AAUP's Committee Z noted that (p. 14): ". . . the greatest single cause of requests by faculty members for assistance by this Association during the last year has been dismissal or nonrenewal on grounds of financial exigency."

We also should recognize, I suppose, that we may not get much sympathy on the outside for our plight. Recently in Boston, as in other cities, the collapse of the aero-space industry has led to the laying off of a good number of the proverbial "$30,000 a year" scientists. An official of the Massachusetts employment service was quoted as being quite unsympathetic with their "bellyaching," as he put it. He pointed out that these guys had had it so good for so long, that they didn't even know how to fill out unemployment compensation forms--as a consequence of which he had to divert valuable staff

time to their instruction in this matter.

In the midst of this darkening financial picture, faculty members engaged with collective bargaining, or enroute to such engagement, find the concept of bargaining, denoting as it does in some general way, "power," an attractive one, particularly, perhaps, if that bargaining can be under the aegis of a big outside organization with "muscle."

What is to be said for the economic-power rationale for faculty getting into collective bargaining? What about the relative influence of market and power forces in the academic market-place? Sceptics about the probable efficacy of collective bargaining are so partly because they regard the academic market-place as one in which supply-demand influences are strongly dominant, decisive for the outcome.

In any case, it would seem clear that a faculty cannot expect suddenly to develop market power it would not otherwise have simply by virtue of declaring itself to be in the collective-bargaining business. If there is to be an enhancement of power, it must be traceable to some particular feature of the situation--say, for example, the availability under collective bargaining of market strategies, such as the strike, that were not available, and might not be available, without collective bargaining.

It is an interesting question what role the strike can and will play in academic collective bargaining. There is, of course, the question of legality. Recently, as you know, the National Labor Relations Board assumed jurisdiction over private colleges and universities with gross revenue of one million dollars a year or more (that is, virtually all private colleges and universities). Consequently, and unless the Board's assumption of

jurisdiction construed to include faculty members is set aside by sebsequent litigation, faculty members in the private sector will, when they bargain collectively, do so under the aegis of the National Labor Relations Act.*/ Consequently, for them, strikes will be legal.

For their brothers in the public sector, the picture is at once different and cloudy. Generally, of course, strikes are banned in the public sector. As Professor Gorman of the Law Faculty of the University of Pennsylvania has pointed out, the dual private-public jurisdiction may create some interesting anomalies as, say, the faculty of a private university, pursuant to its collective bargaining objectives, goes on strike while across the street, so to speak, the faculty of a public institution, likewise pursuing collective bargaining objectives, confronts a law which says no strike. Is not the latter faculty apt to conclude that, although all members of the academy properly are regarded as members of the same peer group, a situation has arisen in which some of the brothers seem to be more equal than others?

I regard it as somewhat remarkable that in the midst of the current deluge of discussion about academic collective bargaining, I have encountered virtually no discussion of the role of the strike strategy. And I have encountered little analysis of the probable efficacy of the strike in this setting.*/

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*/In a case now before the NLRB, Fordham University is challenging the NLRB's assumption of jurisdiction over college and university faculty members. The Board has, however, ordered a representation election for faculty members at Long Island University (see The Chronicle of Higher Education, May 24, 1971).

*/An exception to this is the interesting article: C. Dallas Sands, "The Role of Collective Bargaining in Higher Education," Wisconsin Law Review, Volume 1971, No. 1.

For various reasons (which I cannot undertake to spell out here), I am inclined to doubt the utility of the strike strategy for academic bargaining in the higher-education sector. If this doubt is sound, we are very much left with the basic question--what is the source of faculty members' bargaining power, and is that power any greater depending upon whether the faculty members do or do not engage in collective bargaining?

Some faculty members with whom I have talked profess the belief that the strike issue is not an important one for academic collective bargaining--this in part on the grounds that there are, in any event, alternative and better bargaining strategies for the enhancement of bargaining power. For example, it is contended that faculty may exert a quite powerful influence by using alternative techniques to bring to public attention the need, on grounds of fairness, equity, etc., for improved terms and conditions of employment. I am not prepared wholly to discount this suggestion. For one thing, my own experience with collective bargaining by nurses with health-care facilities, and with collective bargaining in the public sector, has led me to the conclusion that <u>in some instances</u> publicity, or the threat of publicity, of this kind can be quite effective. On the other hand, given the current state of the academic market-place, and the kind of reception currently afforded the academy by the general public, I must confess to not very much confidence in this strategy--at least for the foreseeable future.

Can one judge from an examination of recent academic collective bargaining events what the probable impact of collective bargaining on academic salaries may be? There have been some examples of substantial salary level improvement associated with (and in consquence of?) academic collective

bargaining--no doubt the most famous of which is the recently negotiated NEA agreement for the full-time faculty at the City University of New York (where the top of the full Professor's range was pushed over $30,000).*/ One would have to examine the circumstances of this particular case more closely than I have had an opportunity to do, in order to judge its significance. It is worth noting that the Chronicle of Higher Education (April 26, 1971) reports that budget cuts proposed, but not yet passed, in the New York legislature could have a drastic effect on City University of New York--including the necessity for CUNY greatly to reduce the size of its freshman class (which would, in effect, end the University's recently inaugerated Open Admissions' Program). When we've had a chance to see how collective bargaining at CUNY weathers this current storm, we will know more than we now do about the potentialities of academic collective bargaining.

In any case, the data record is probably yet too thin upon which to base reliable judgments about the probable effectiveness of academic collective bargaining as a way to increase salaries.*/ (And when the data base is more adequate, students attempting to unravel it from the point of view of

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*/For some data on salary increases and some interpretive comment on them see: An Impartial Review of Collective Bargaining by University Faculties, prepared by the Michigan State University Faculty Affairs Committee, March 9, 1971. This interesting document is characterized in its forward as: "The intent of this review is to be as factual and impartial as possible in an effort to help faculty members at Michigan State University arrive at a reasoned personal position on the matter of unionization."

*/Although a more systematic examination of this record to date might yield a better basis for judgment than this statement would imply.

discerning the relative impact of power and market forces will confront a number of analytical problems with which we are familiar in other domains).

AAUP Committee Z, in its recent annual meeting report on the economic status of the profession (appropriately entitled "At the Brink"), pointed out that in the current circumstances of stringency, the entire academic profession inevitably faces a host of hard choices with respect to how to respond to severely limited funds--one category of such choices being the sorts of trade-offs the profession will choose in distributing the limited resources. The Committee goes on to suggest that, in this domain, a first choice is between salary and teaching loads. What I take to be, at least in part, a similar kind of suggestion has been made by Professor Joseph W. Garbarino. */ Increased work loads are, indeed, one of the possible responses to our current problems. But whatever is to be said for it, what is of particular relevance in this context is to observe that such work load bargains are by no means a monopoly of the collective-bargaining form of institution government. That is, faculties participating in conventional academic-senate-type governments, could design, and agree to any of a large variety of such packages.

What To Do, Once In Collective Bargaining?

This is the question of what kind of collective agreement to negotiate. To provide a framework for an answer to this question, let me now, and at those risks associated with great simplification, try to describe two paradigm

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*/(See "Precarious Professors: New Patterns of Representation" previously cited.)

types of academic collective agreement.

The first type I shall term the "conventional collective agreement." With this approach, the agreement conference itself is regarded as the only decision-making body by means of which the faculty participates in college or university government. The subject matter content of such an agreement may be various, but if the agreement conference itself is to be the only forum in which the faculty shares authority, the agreement, if it is to be at all satisfactory, must be quite comprehensive. Thus, for example, in addition to salary and related fringe items, this agreement will include substantive clauses relating to such subject matter as: work load, notice of appointment, re-appointment, professional evaluations, personnel files and the like. In short, the agreement will comprehend as substantive subject matter covered by its clauses most of what is usually regarded as the regular grist of the conventional shared-authority mill. The conventional agreement will include a grievance procedure, probably terminating in final and binding arbitration, and it will be stipulated that the grievance procedure, as set forth, will be the sole method used for the resolution of all complaints and grievances. Such a contract may be quite a bulky document. (For an example of this kind of agreement, see the Sample Contract prepared and edited by Ralph S. Chesebrough and Phillip A. Encinio for the members of the National Society of Professors, the National Higher Education Association, The National Education Association and the members of affiliated state education and higher education associations, June, 1970).

The second kind of agreement I shall call the "procedural agreement"

(although I wish I had a better name) on the ground that, as you will see, it is in many ways more concerned to set up procedures for the making of decisions, than actually to make decisions itself. With this approach, the agreement conference is not regarded as the only decision-making body by means of which the faculty shares authority in the government of the institution. The substantitive content of such an agreement may be various, but usually speaking, it will be quite narrow and restricted pretty much to salary and some related items. Beyond this, the agreement, perhaps by the device of incorporating by reference other documents, understandings, and practices will establish and give contractual status to various other decision-making bodies and forums, by means of which the faculty will also share authority in the government of the institution. By such other decision-making bodies and forums, I have in mind, for example, the faculty bodies and committees, including the academic senate itself, usually associated with the senate form of government. As part of this, the agreement will establish basic "constitutional" understandings, again perhaps by incorporating by reference such documents as, e.g., the 1940 Statement of Principles on Academic Freedom and Tenure and the AAUP's 1966 Statement on Government of Colleges and Universities. (An excellent example of this kind of agreement is that recently negotiated between the administration of St. Johns University in New York and the St. Johns Chapter of the AAUP--Faculty Association at St. Johns University.)

For purposes of expositional simplicity, I have sketched out briefly each of two paradigm types. Any actual agreement, of course, might represent some

mixture of the two approaches.

What is to be said in an evaluation of these two types of agreement? One should, I think, recognize at the outset that while an agreement of the first, or conventional, type might be very bad (as, indeed, might an agreement of the second, or procedural, type--depending upon the particular procedures invoked) it might also be pretty good--in the sense of some reasonable attention to due process, tenure and provisions to secure academic freedom, and so on.

Nevertheless, I feel that there are strong reasons for preferring an agreement of the second type. Collective bargaining is a form of institution government. The second type of agreement--the procedural agreement, as I have called it--primarily is concerned to use the collective-bargaining form of government as a vehicle for setting up and/or confirming another kind of government--namely, that array of committees, procedures, and the like, included in a properly constituted academic-senate model. In this role, collective bargaining may be regarded as a kind of "mid-wife" who helps the faculty give birth to another government.

Given the central features of the procedural agreement, a relative evaluation of it and the conventional agreement may likewise be regarded as, to a considerable extent, a relative evaluation of the latter and the academic-senate form of government (i.e., where no collective bargaining is involved). My focus in this discussion does not, however, carry the implication that the procedural agreement properly is regarded as no more than just an academic-senate government got by going around Robin Hood's barn.

For one (perhaps potentially important) thing, the procedural agreement does represent a contractual commitment--which the pure academic-senate form does not (at least in any very direct sense). Suppose for example, that a procedural agreement incorporates by reference the 1940 Statement and related AAUP policy documents. A faculty member of the bargaining unit who feels that his academic freedom has been infringed, as tested by the standards of the incorporated policy statement, would now, in principle at least, be in a position to support his claim by a suit for contract violation. That is, in this particular kind of case, the fact of the agreement opens the door to litigation in support of academic freedom, due process and the like.

Also, of course, with the procedural agreement, certain substantive matters are referred directly to the collective agreement and to the agreement conference--notably, salary and related monetary and fringe items. Perhaps, in the agreement conference, a kind of negotiation power may be brought to bear upon these items which is at once arguably appropriate to reaching agreement about them and difficult to wield by any other organizational device.

Returning now to the previous line of thought, why is it prefereable to use collective bargaining to set up other academic government forms, rather than simply to assign all academic issues directly to the bargaining process and the agreement conference? The answer to this question may seem to many of us almost intuitively obvious,--and perhaps it is. However, I'm inclined to regard this as a difficult question to answer for two reasons:

(1) When we come to an analysis of these problems, and as my "intuitively

obvious" comment suggests, we may, to some extent at least, be the unwitting victims of old professor's tales. (2) There are a number of subtleties involved which are difficult to expose and to elucidate in short compass. Perhaps the best thing will be for me rather briefly to suggest what seem to be the main points--and then perhaps we will find time for discussion of some of these.

In making these points, I suppose I refer them in my own thinking to one or another particular decision-making process and/or subject in academic government--let us say, for example, various personnel decisions. The points I will make fall into a few general areas. */

First: The character of representation implied in collective bargaining and in the academic-senate model. Collective-bargaining representation implies a division of the faculty into "parties," or "interest groups." That is, those who compete for the role of certified representative, almost necessarily identify themselves with some organization or other (inside or outside but which, in an organization sense, usually is not co-terminous with the faculty, and which, in the usual case, has a membership less than that of the full faculty). This kind of in-house politicization, as it were, is not an optimal format for achieving representation in academic decision-making processes. It is in part due to concerns on this score that some faculty members engaged in collective bargaining want to take many academic questions "out of the

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*/For an interesting discussion of the relationship of collective bargaining to conventional academic government which raises some of the points to follow, see: Matthew W. Finkin, "Collective Bargaining and University Government," Wisconsin Law Review.

bargaining unit," as it were, and hand them over to the faculty as a whole.

With the academic-senate model on the other hand, it is customary for all faculty (or all of some large subset of faculty) to constitute the peak faculty governing body, and for all (or some large subset of all) faculty to stand for election to the various faculty committees,--and, in each case, identified just as faculty members, with responsibilities and concerns running to the institution as a whole, and not, by implication at least, to the "party" to which they belong.

Now let me hasten to point out (and before I am overwhelmed by shouts of indignation, particularly eminating from the younger faculty members present) that I am not so naive as to believe that no in-house politicization of the "interest group" kind characterizes conventional academic-senate-type government. Indeed, in recent years there has been a tendency for just such politicing to develop in faculties. I hope I am doing more than simply to reflect the dinosaur in me, when I say that I regard this development as in many ways sad and destructive. My point here is not to assert what happens in each and every instance of collective-bargaining government, or in each and every instance of academic-senate government. Rather, the question is, which way, in general, and by virture by their internal logic, do these forms tend to lean. With collective bargaining, it seems to me that the "party" approach virtually is thrust upon the faculty. With the academic-senate form, on the other hand, such an approach must be regarded as disjoint, and the logic of that form creates presumptions in favor of the professional-representative-at-large kind of representation.

Second: The kind of power mapped into outcomes. As regards certain kinds of academic decisions, a difficulty with the conventional collective-bargaining approach is that it may tend either to map the wrong kind of power into outcomes, and/or to give away too much power--by virtue of the negotiation format. One can think about the kind of power mapped into negotiated outcomes in terms of categories of negotiation tactics. Particularly, we may distinguish coercive tactics (based, say, upon threats of one kind or another) and tactics of persuasion and rationalization. Most members of the academy feel that academic questions properly are resolved by resort to such tactics as persuasion and rationalization, and they feel further that coercion in this domain can only be destructive. There is moreover the belief that resort to collective bargaining will tend to shift the emphasis in the tactic-mix in an undesirable way towards coercion, as compared with the academic-senate form more apt to emphasize persuasion and rationalization.

This belief stems, in part, I suppose, from observation of the operation of collective bargaining in the world at large. It also derives from the common characterization of the logic of the negotiation decision-making process in which each party controls some technique for imposing a "cost of disagreement" upon his opposite number, thereby invoking concession and compromise. It should be remarked that such a shift in the tactic-mix is not necessarily a consequence of resort to collective bargaining. Again, it is a question of the direction in which different government forms are apt to lean.

I have said that one problem with assigning certain kinds of academic decisions to the collective bargaining agreement conference is that this

represents an undesirable giving away of power by the faculty. This will be the case when, by such an assignment to the agreement conference, we imply that what was heretofor regarded as "non-negotiable" (in a peculiar way) has now become negotiable. (I say non-negotiable "in a peculiar way" because, as a faculty, we operate our "unilateral" decision-making processes on the basis of a delegation to us of that right by the governing board of the institution.)

Various observers have suggested that a loss of faculty power and an attenuation of the faculty role in academic decision-making may be one of the undesirable consequences of academic collective bargaining. For example, Dr. Lyle H. Lanier, Executive Vice President and Provost of the University of Illinois has remarked: "Briefly, my own opinion of collective bargaining in the context of the present governance structure of the University of Illinois (and most other larger institutions of higher education) is as follows: it seems to me that collective bargaining between a faculty organization and the Board of Trustees (or its representatives) is a practice that runs directly counter to the evolutionary trend towards increasing faculty involvement in the governance of institutions of higher education." */ Father Dexter L. Hanley, President of the University of Scranton has remarked: "Is unionization in the best interests of the university? Of the faculty?

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*/See "An Impartial Review of Collective Bargaining by University Faculties," prepared by the Michigan State University Faculty Affairs Committee, March 9, 1971, p. 40.

view a faculty union with alarm, inasmuch as it is destructive of the traditional role of the faculty. In the decision-making process of the university, unionization will at least militate against any increased role of the faculty in governance." */ Professor Garbirino (cited foregoing, page 18) has noted: "An occasional member of a governing board has suggested that replacing traditional methods of university administration by a system of formal collective bargaining might produce a major gain from the administrators' point of view. This view is based on the unrealistic assumption that the policy slate would be wiped clean, with the network of established practices (e.g., tenure, sabbattical, periodic evaluation) being abolished, and new working conditions being negotiated through the machinery."

These kinds of comments reflect the fear (or perhaps in some quarters, the hope) that by engaging in academic collective bargaining, faculties will lose "recognition." However, it should be emphasized that this is certainly not a necessary consequence of faculty involvement with collective bargaining. Indeed, I would not expect it to be a common outcome in those instances in which faculty involvement with collective bargaining is properly conducted, as by the negotiation of the "procedural" type of agreement I have suggested.

Earlier on in this talk I suggested that one reason for getting into collective bargaining was precisely to gain "recognition" and I persist in my view that this is a much more likely possibility than its loss.**/

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*/See "Issues and Models for Collective Bargaining in Higher Education," _____.

**/It must be recognized that a good bit of the proof of this pudding

Is there something peculiar or disjoint about faculty members in the collective bargaining process using that role and process to negotiate their way into professional-peer-group participation, shared authority and the like? The answer is "no."*/ In fact, it recently was pointed out to me that there is an interesting kind of symmetry represented by the procedural type of collective agreement. Historically, with the academic-senate-type of government, the faculty has operated under a grant or delegation of powers to it by the governing board. Under the procedural type of agreement, that grant or delegation is maintained--now, however, in the form of a contractual commitment to the bargaining agent. Additionally, the bargaining agent, as party to the agreement, likewise may be regarded as granting or delegating powers to the faculty.

Third: The matter of grievance or dispute management techniques. The outcome of collective bargaining is agreement, embodied in a contract signed by the parties. In administering the contract, some procedure is required for the management of those disputes which may arise regarding inter-

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**/(Cont. from page 20) remains for the eating. Faculties cannot unilaterally determine the contents of a collective agreement--the contents represent negotiated agreements. Consequently, the contents of an agreement will depend in part on what the college or university administration can be induced to agree to. This in turn will depend somewhat on the laws governing the various negotiations. Of particular importance here may be the question of what subject matter is regarded as mandatory subject matter for bargaining under the relevant law in each case.

*/At least, the short answer is "no"--and some might feel it may be a little too short. See M.W. Finkin, cited foregoing, for some discussion of the problem of the probable stability of such arrangements.

pretation and application of the terms of the contract. Typically, a grievance procedure will be provided for this function, the last step of which will be the final and binding arbitration. In the usual collective bargaining context, both pragmatic concerns and the inherent logic of the negotiation process strongly urge the appropriateness of such dispute management institutions.

College or university government, however, is not a typical collective bargaining context. More particularly, in the administration of college or university government, disputes may arise over academic matters such that ultimate disposition of them by arbitration probably is fundamentally inappropriate.

These considerations again recommend the procedural type of collective agreement. In such an agreement, in addition to assigning such decisions to bodies other than the agreement conference, and to instruments other than the collective agreement per se, care should be exercised to exclude disputes arising in these areas from the regular grievance-arbitration procedures. Thus, for example, the St. Johns University agreement to which I earlier refered, provides that: the term "grievance" shall not include (among other things) "complaints relating to the merits of appointment, re-appointment, promotion and academic freedom and tenure, which matters are governed by the statutes and practices of the administration."*/

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*/ The statutes and practices of the administration herein refered to incorporate provisions for academic senate faculty government.

Under What Aegis To Be Represented in Collective Bargaining?

Faculty members in collective bargaining may be represented by any of various organizations or agents. Thus, the agent might be a faculty senate or some other subset of the faculty, such as an independent faculty association. Or the representative might be the local AAUP Chapter (working with the advice and the support of the National AAUP). Or the faculty might be represented by an agent which was an affiliate of an outside organization, such as, say, the National Education Association, or the American Federation of Teachers.

The identification of the bargaining agent may be very important for various reasons. For one thing, there is the question of the kind of expertise about academic government matters the agent will bring to the bargaining table. This in turn partly will be reflected in the kind of agreement the agent tends to favor and to work for.

Although I emphasize that I regard a proper resolution of the question of representation in this sense to be important, I will not undertake here a general discussion of it. (I refer you to Professor Garbarino's article, cited foregoing, for an illuminating discussion of these matters. If there is interest, perhaps later we can find time for some discussion of them.)

Although undertaking no general discussion, I would like briefly to allude to a novel approach described by Father Dexter L. Hanley (cited foregoing). This alternate model, now operating at the University of Scranton, is what Hanley terms "the Professional Negotiating Team." At Scranton, the Professional Negotiating Team, known as the Faculty Council, is composed

of three faculty members who are the officers of the local chapter of the AAUP, and two other faculty members elected at large. In a Recognition Agreement, signed between the Faculty Council and the University, it was made clear that bargaining was a matter of voluntary agreement and not based upon legal obligations. Further, the Faculty Council disavowed that it was a majority bargaining representative under the NLRA. The Faculty Council team bargained with a University team, made up of the President, the Controller, and the Chief Academic Officers of the University--a team approved by the trustees, who have the right to reject or approve the final contract, as does the faculty as a whole.

According to Hanley, these arrangements have worked well at Scranton. I do not here undertake a general evaluation of them.

There is, however a particular question of interest--whether such an arrangement may represent an entering wedge of "company unionism" in the academic arena, and if so, what is to be said for this kind of halfway house.

In this same article, Father Hanley, in discussing what kinds of steps may be taken to discourage unionization, suggests that: "Third, the nature and limitations of collective bargaining should be understood by the faculty and the administration. Indeed, the faculty should be led [emphasis mine] to see that there are no magic formulas by which they can elevate their financial interest over the good of the university." In this context, I feel the urge to paraphrase: "Yea, though I walk through the Valley of the Shadow of Deficits, I will fear no decrease in real income, for the President of the College art with me." Can it be that this is the spirit with which Father Hanley would expect

the members of the Faculty Professional Negotiating Team to enter the fray?

Time has run out, and so, leaving you with that final thought, I bring this talk to a close.